

General Term and Conditions for Service and Maintenance (GTC-SM)

A. General

1. Definitions

VENDOR	shall mean Grabner Instruments Messtechnik GmbH, a subsidiary of AMETEK, with its registered office at Austria, 1220 Vienna, Dr. Otto-Neurath-Gasse 1;
CUSTOMER	shall mean any third party which acquired a DEVICE and uses it as an End-User and enters into a Service Agreement and/or Maintenance Agreement with the VENDOR;
DISTRIBUTOR	shall mean any third party being authorized by VENDOR to distribute DEVICES, provide sales training and first level support; for the avoidance of doubt DISTRIBUTOR shall not be deemed to be CUSTOMER in the sense of this GTC-SM;
ASP	(Authorized Service Provider) shall mean any third party being authorized by VENDOR to provide Service and Support for the DEVICES which are committed to the high level quality of AMETEK services;
DEVICE	shall mean any measurement instrument offered by VENDOR; DEVICE shall include NEW DEVICE and RECONDITIONED DEVICE;
NEW DEVICE	shall mean any new and unused DEVICE;
RECONDITIONED DEVICE	shall mean any DEVICE previously used as Loaner Unit and/or demonstration equipment; RECONDITIONED DEVICE is fully inspected and re-calibrated but with slight signs of usage; RECONDITIONED DEVICE is marked with a "G-Select"-Sticker;
G-TICKET-SYSTEM	shall mean the tool provided by VENDOR on its website [http://www.grabner-care.com]; CUSTOMER is obliged to use this tool to report service requests and incidents; instructions will be given to CUSTOMER via this tool on how to proceed in the relevant service incident;

2. Subject matter of the GTC-SM

The GTC-SM shall apply to all services as described below which are offered to CUSTOMER by VENDOR.

Any Service Agreement and/or Maintenance Order entered into between CUSTOMER and VENDOR shall be subject to the GTC-SM.

This GTC-SM contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior written and oral understandings of the parties with respect to the subject matter hereof. Any GTC of CUSTOMER shall not apply.

3. Services and Maintenance

To serve its CUSTOMER, VENDOR offers a broad range of maintenance and service support, which will be provided by VENDOR employees in VENDOR property laboratories in the EU or the USA, or by ASP.

CUSTOMER may order any of the services as described below by using the G-Ticketing-System or sign a maintenance order.

4. Principles of Services and Maintenance

Services and Maintenance subject to this GTC-SM will be rendered with due care and "State-of-the-Art".

Only those services as agreed upon in the subject matter service and/or maintenance order will be provided by VENDOR or its authorized service partners. VENDOR shall be obligated to provide only services that are expressly agreed upon in writing but shall not be obligated to provide services expected by the CUSTOMER that have not been expressly agreed upon.

In case the DEVICE is delivered to VENDOR to provide service and/or maintenance, the subject matter service and/or maintenance will be rendered based on "First-In – First-Served" principle. In case CUSTOMER ordered a CARE Service Package the subject matter DEVICE will be prioritized which means that it will be put on top of the line for services to be executed.

B. Warranty

1. Definition

For the duration of 2 years VENDOR warrants the functionality of NEW DEVICES sold and delivered by VENDOR.

For the duration of 6 months VENDOR warrants the functionality of RECONDITIONED DEVICES sold and delivered by VENDOR.

DEVICE is defined in the relevant purchase agreement and/or service agreement and/or maintenance order by means its serial number.

Warranty starts the day the DEVICE is delivered to CUSTOMER.

Warranty in terms of this GTC-SM includes the following:

- Warranty is defined as implied warranty and subject to the terms as set forth in the Austrian General Civil Code (ABGB);
- VENDOR warrants the functionality of the DEVICE, which includes software and hardware; warranty definition of the End User License Agreement (“EULA”) shall apply for the software;
- Only technical malfunction will be accepted as being covered by warranty;
- Warranty shall not apply if the defect is caused by misuse, use by incompetent personal, neglect handling, non-authorized modification of hardware or software, nonobservance of guidance and directions given in the manual or by any service technician of VENDOR or any of its ASP, vandalism, malicious mischief, force majeure;
- Warranty shall not apply if the warranty seal at the bottom-plate of the DEVICE is broken or in some other way destroyed;
- Warranty shall not apply if CUSTOMER returns the DEVICE using inappropriate packaging (see Important Notice below);
- CUSTOMER must meet certain obligations subject to the preconditions as stipulated below;
- Remedy of technical malfunction will be free of charge to the CUSTOMER subject to the preconditions as stipulated below.

2. CUSTOMER’s obligations

To have a technical malfunction accepted as being covered by Warranty

CUSTOMER must follow the following instructions:

- Defect DEVICE must be available on-line for remote check by VENDOR;
- CUSTOMER reports assumed defect by using the G-TICKET-SYSTEM; the complete form has to be filled in;
- CUSTOMER follows the instructions given by VENDOR or ASP, especially regarding return of the defect DEVICE;

- CUSTOMER returns the DEVICE to VENDOR; address and transport instructions will be given to CUSTOMER by VENDOR via G-TICKET-SYSTEM;
- CUSTOMER is obliged follow the instructions as stipulated in the Important Notice below.

3. IMPORTANT NOTICE:

VENDOR is obliged to use proper packaging to return DEVICE to VENDOR, which shall be the original packaging used by VENDOR for shipping the DEVICE to CUSTOMER. If unavailable, CUSTOMER may order an appropriate package from VENDOR which will be charged to CUSTOMER.

Warranty will expire in case CUSTOMER uses improper packaging for returning the DEVICE to VENDOR.

In case CUSTOMER returns the DEVICE by using improper packaging VENDOR shall be entitled to charge CUSTOMER for the costs of the repair.

In case any defect is not reported accordingly VENDOR shall not be obliged to take any action to remedy any defect.

4. Remedy free of charge or charged

Remedy of technical malfunction in case it is covered by Warranty is free of charge to the CUSTOMER.

This includes:

- Remote defect analysis via web-based and telephone support;
- Transportation of the DEVICE from CUSTOMER's location within the EU or the US to an AMETEK lab in the EU or the USA, or of any certified service partner of VENDOR;
- Transportation of the repaired DEVICE back to CUSTOMER;
- Repair execution;
- All spares and consumables used for repair and re-calibration;

It does not include:

- Transportation fee or any other customs and logistic fees for transport from DISTRIBUTOR to VENDOR
- Transportation from locations outside the EU or the USA to VENDOR (for the avoidance of doubt the transportation back to CUSTOMER will be paid by VENDOR regardless of geographical limitations);
- Customs duty for sending the DEVICE to VENDOR and vice versa returning the DEVICE to CUSTOMER;

For the avoidance of doubt it is agreed that only upon directions given by VENDOR or ASP CUSTOMER may send the DEVICE to VENDOR.

Any shipment of goods not being covered by the appropriate procedure (i.e. reporting incident via G-TICKET-SYSTEM and fulfillment of the instructions as given therein and obligations as stipulated in the GTC-SM) will be subject to extra charge of a handling fee which will be defined in the price list. In addition any costs occurred for transportation of the DEVICE to VENDOR will be charged to CUSTOMER.

Notwithstanding the foregoing, VENDOR reserves the right to return DEVICES to CUSTOMER at his own risk and cost if it was sent by the CUSTOMER to the VENDOR not compliant to the guidelines and/or directions given by the VENDOR or its authorized service partners, and/or not compliant to the terms of the GTC-SM.

5. Contact

For the avoidance of doubt it is agreed that only the G-TICKET-SYSTEM provided under [<http://www.grabner-care.com>] will be the accepted method to report defects or support incidents.

Notwithstanding the foregoing, VENDOR offers some methods of direct communication by paper mail enquires or through the following toll-number:

Phone +43 / 1 / 282 16 27 Ext.200

6. Availability

Telephone Service is available on Austrian business days (i.e. Monday to Friday, excluding public holidays) from

Mo - Thu: 09:00 - 17:00 CET
Fr: 09:00 - 14:00 CET

7. Warranty on the repair

For any repair executed under the terms of Warranty during the first 18 months of the Warranty period, the total Warranty period shall not be extended by the repair.

In case the repair was executed after month 18 of the Warranty period, VENDOR grants a 12-months-warranty on the performed service and used spare parts only, beginning the day the DEVICE is returned to CUSTOMER. In no case Warranty for the functional parts of the DEVICE shall be modified by the 12-months-warranty on the repair.

Warranty on the repair is subject to the same terms and conditions as standard Warranty.

8. Warranty on the software

Software Warranty includes corrective maintenance only (updates).

Corrective maintenance shall be defined as code modification and/or correction to eliminate errors which are caused by abnormal performance of the software. Abnormal performance is given if the software does not perform in compliance with the technical specification of the DEVICE.

To be accepted as software error subject to corrective maintenance, the error has to be reproducible.

Adaptive maintenance (upgrades and new releases) shall not be included in the Software Warranty.

Adaptive Maintenance shall be defined as code modification due to technical developments of the DEVICE or new requirements of the market, or some errors occurring on other devices.

To receive upgrades and new releases, an order has to be agreed upon between CUSTOMER and VENDOR.

C. Standard Services

1. Definition

Standard Services are services offered by VENDOR to all Customers and not subject to Warranty or any Maintenance or Service Package. It includes the services listed below.

Standard Services may be ordered by CUSTOMER upon request by using the G-TICKET-SYSTEM or by signing a purchase order for the relevant service.

Prices for the Standard Services according to VENDOR's price list. The GTC-SM apply to all Standard Services.

2. ACCS or ACCESS

ACCS or ACCESS is defined as a one-time telephone or web-based support call. Phone-Number for the support calls will be provided in the order confirmation.

Upon order of ACCS, VENDOR support specialist will support CUSTOMER in the use of the set-up of a web-based connection via the DEVICE-tool (f.e. "GI Home

Button”) or provide general telephone support for products, where remote diagnostic connection is not possible.

CUSTOMER gets support via phone and/or skype, provided CUSTOMER calls in.

ACCS is limited to a maximum of 1 hour support. CUSTOMER may extend the ACCS-unit if required by ordering a consecutive ACCS-unit. In that case a 20%-discount will apply to any consecutive ACCS-unit.

If in the course of the ACCS-unit the cause of the ACCS-support proves to be a defect subject to Warranty the ACCS-fee will be credited to VENDOR.

3. CAL-CHECK

CAL-CHECK is defined as calibration service.

CAL-CHECK has to be ordered within 12 months and to be consumed by the VENDOR within 24 months upon delivery of the DEVICE.

CAL-CHECK includes 1 ACCS-unit. Phone-Number for the support calls will be provided in the order confirmation.

To execute CAL-CHECK, the same reporting procedure as for Warranty shall apply.

As for transportation and packaging the same restrictions and obligations and terms for covering the costs as for Warranty shall apply.

The costs for calibration liquids for IR Vision infrared analyzers are not included in the fee and will be charged separately.

A Loaner Unit is available upon request of the CUSTOMER and at charge according to pricelist.

4. CAL-PLUS

CAL-PLUS is defined as a preventive maintenance check including calibration.

CAL-PLUS has to be ordered within 12 months and to be consumed by the VENDOR within 24 months upon delivery of the DEVICE.

CAL-PLUS includes 1 ACCS-unit. Phone-Number for the support calls will be provided in the order confirmation.

To execute CAL-PLUS, the same reporting procedure as for Warranty shall apply.

As for transportation and packaging the same restrictions and obligations and terms for covering the costs as for Warranty shall apply.

The costs for consumables and sealing are included in the fee. Not included are costs for calibration liquids for IR Vision infrared analyzers, which will be charged separately.

A Loaner Unit is available upon request of the CUSTOMER and at charge according to pricelist.

D. Support Package Group “HELP”

1. Definition

HELP Support Packages are defined to be remote phone and web-based support service for the use of the DEVICE and to analyze assumed technical defects. It includes the Service Packages as listed below. Phone-Number for the support calls will be provided in the order confirmation.

Any HELP Support Package is deemed to be an annual service agreement. It will be ordered and paid on an annual basis. Services not consumed during the term of the service agreement will expire. For details about the term and termination of the HELP Support Packages please refer to the commercial terms of the GTC-SM. HELP Services may be ordered by CUSTOMER upon request by using the G-Ticket-System via [<http://www.grabner-care.com>] or by signing a purchase order for the relevant service.

Prices for the HELP Services according to VENDOR's price list. The GTC-SM apply to all HELP Services.

2. HELP

HELP is the basic support package including web-training.

It includes 5 ACCS units which may be used as one session for maximum 5 hours, or divided into separate sessions of maximum 1, 2 or 3 hours. Every session must be planned using the G-TICKET-SYSTEM.

Furthermore it includes a one-hour web-training provided by VENDOR or ASP. The training will be provided by means of internet connection of the trainer to the DEVICE (where possible) and in parallel a phone / skype connection to the CUSTOMER (CUSTOMER to dial in).

In case HELP Support package is exhausted CUSTOMER may either order another Support Package or the Standard Service Product ACCS.

If in the course of an ACCS-unit the cause of the ACCS-support proves to be a defect subject to Warranty the ACCS-fee will be credited pro-rata to CUSTOMER.

Additional web-training may be ordered by the CUSTOMER at the terms and fee of an ACCS-unit.

3. HELP PLUS

HELP PLUS is the full support package including on-site-training or alternatively database optimisation for IR Vision Fuel analyzers.

It includes 5 ACCS units which may be used as one session for maximum 5 hours, or divided into separate sessions of maximum 1, 2 or 3 hours. Every session must be planned using the G-TICKET-SYSTEM.

Furthermore it includes a one-hour web-based support for EITHER instrument training OR to setup a high-secure Enterprise Measurement Database for the DEVICE on a local VM Server based on SQL OR to connect the DEVICE with CUSTOMER's LIMS. Support will be provided by means of internet connection of the VENDOR's specialist to the DEVICE and in parallel a phone / skype connection to the CUSTOMER (CUSTOMER to dial in). Phone-Number for the support calls will be provided in the order confirmation.

Furthermore it includes a one-day training on site at customer's premises or one-day remote database and method optimization of customer's IR Vision analyzer.

On site training is subject to the following preconditions and restrictions:

- CUSTOMER's premises is deemed to be the place CUSTOMER has its registered office, but not the place the DEVICE is actually in use;
- Travel fees of VENDOR's trainer is to be covered by CUSTOMER;
- Attendance of the training limited to a maximum of 10 people;
- Training location to be provided by the CUSTOMER at its own expense;
- CUSTOMER reserves the right to refuse to travel to certain geographical regions upon actual security situation and/or travel restrictions based on national and/or international acts (f.e. US embargo regulations).

Upon CUSTOMER's sole decision training may be held remotely via web.

In case HELP PLUS service package is exhausted CUSTOMER may either order another Service Package or the Standard Service Product ACCS.

If in the course of an ACCS-unit the cause of the ACCS-support proves to be a defect subject to Warranty the ACCS-fee will be credited pro-rata to CUSTOMER.

Additional web-support for DB-setup may be ordered by the CUSTOMER at the terms and fee of an ACCS-unit. Additional on-site training is subject to separate agreement between the parties.

E. Service Package Group “CARE”

1. Definition

CARE Service Packages are defined to be an upgraded and extended warranty on the functionality of the DEVICE. It includes the Service Packages as listed below.

Any CARE Service Package is deemed to be a service agreement for 3 years. It will be ordered and paid in advance. Services not consumed during the term of the service agreement will expire. For details about the term and termination of the CARE Service Packages please refer to the commercial terms of the GTC-SM. CARE Service Packages may be ordered by CUSTOMER upon request by using the G-TICKET-SYSTEM or by signing a purchase order for the relevant service.

Prices for the CARE Services according to VENDOR's price list. The GTC-SM apply to all CARE Services.

2. CARE

It includes the following services as listed below.

- Extension of Warranty to 3 years or a maximum of 50,000 measurement cycles.
- 1 CAL-PLUS service during the entire term of the CARE agreement. Fee includes all spare parts, consumables and sealing for this CAL-PLUS.
- HELP Support Pack is included for the first year of the term of the CARE agreement at no additional charge, and will renew into a subscription at the beginning of the second year, if not cancelled.
- Prioritized execution of service and maintenance.
- In case the DEVICE is sent to VENDOR for service and/or maintenance VENDOR guarantees a TAT (Turn Around Time) of 5 workdays or the provision of a loaner unit at no charge for a service duration exceeding TAT.

TAT shall start the workday following the day the DEVICE arrives at VENDOR or its authorized service partner, and end the day the repair/service/maintenance is finalized. DEVICE will be returned to CUSTOMER the workday following the last TAT-day.

- Loaner Unit available upon request of the CUSTOMER and at charge according to pricelist.
- Includes free calibration, final inspection, and free test & calibration certificate after service or maintenance.

The terms of Warranty (preconditions for Warranty acceptance, CUSTOMER's obligations, transport and packaging) shall apply.

The terms of CAL-PLUS and HELP shall apply.

In case HELP Support Package which is part of CARE is exhausted CUSTOMER may either order another Service Package or the Standard Service Product ACCS.

Additional web-training may be ordered by the CUSTOMER at the terms and fee of an ACCS-unit.

3. CARE GOLD

It includes the following services as listed below.

- Extension of Warranty to 3 years or a maximum of 50,000 measurement cycles.
- 2 CAL-PLUS services during the entire term of the CARE GOLD agreement. Fee includes all spare parts, consumables and sealing for this CAL-PLUS services.
- Loaner Unit granted
VENDOR will ship a Loaner Unit at no extra charge within 24 hours after the assumed defect is reported and confirmed through G-TICKET-SYSTEM.
- HELP Support Pack is included for the first year of the term of the CARE GOLD agreement at no additional charge, and will renew into a subscription at the beginning of the second year, if not cancelled.
- Prioritized execution of service and maintenance.
- Includes free calibration, final inspection, and free test & calibration certificate after service or maintenance.

The terms of Warranty (preconditions for Warranty acceptance, CUSTOMER's obligations, transport and packaging) shall apply.

The terms of CAL-PLUS and HELP shall apply.

In case HELP Support Package which is part of CARE is exhausted CUSTOMER may either order another Service Package or the Standard Service Product ACCS.

Additional web-training may be ordered by the CUSTOMER at the terms and fee of an ACCS-unit.

F. Loaner Unit

In case CUSTOMER ordered CAL-CHECK, CAL-PLUS or CARE, the Loaner Unit will be offered to CUSTOMER and will be charged at the price stipulated in the price list.

To receive a Loaner Unit, CUSTOMER has to upload the request into the G-TICKET-SYSTEM.

In case VENDOR is unable to fulfill the TAT for CARE VENDOR will contact CUSTOMER. In this case, and upon request of CUSTOMER, VENDOR will provide a Loaner Unit at no charge. Again, CUSTOMER has to upload the request into the G-TICKET-SYSTEM.

In case CUSTOMER ordered CARE GOLD, the Loaner Unit will be provided free of charge and sent to CUSTOMER within 24 hours upon reporting and verification of the CARE GOLD-Service incident via the G-TICKET-SYSTEM.

In any case, the 24-hours-timelimit shall start the workday following the day CUSTOMER's request for a Loaner Unit has been reported and verified via the G-TICKET-SYSTEM.

Only workdays shall be considered being part of the 24-hours-timelimit within which the Loaner Unit is due to be sent to CUSTOMER. Non-workdays shall not be taken into consideration.

In any case, a Loaner Unit shall be provided for 2 weeks or the duration of any repair.

Loaner unit shall either the same type as the DEVICE or a type similar to the DEVICE but able to fulfill the same measurements as the original DEVICE. It will be a used instrument which is technically reviewed, fully approved and updated.

Loaner unit shall remain unrestricted property of VENDOR. CUSTOMER will not receive any title or right whatsoever on the loaner unit or any part of it. CUSTOMER shall only be entitled to use the loaner unit during the agreed term of loan.

During term of loan, the loaner unit shall be subject to CUSTOMER's responsibility. CUSTOMER shall bear the risk of loss and damage.

As for transportation and packaging the same restrictions and obligations and terms for covering the costs as for Warranty shall apply.

CUSTOMER has to return the Loaner Unit upon receipt of the returned original DEVICE.

G. Commercial Terms

1. Order

For services subject to Warranty CUSTOMER has to comply with the guidelines as stipulated in Section B, Clause 2 "CUSTOMER's obligations".

Besides full compliance with the procedure as stipulated in Section B, no special order is required for the fulfillment of Warranty services, but the logging of a ticket via G-TICKET-SYSTEM is mandatory.

For Standard Services as defined in Section C and/or Service Package Group "HELP" as defined in Section D and/or Service Package Group "CARE" as defined in Section E, CUSTOMER has to either sign a written order for the relevant service and/or package which will be offered by VENDOR's sales department, or by using the G-TICKET-SYSTEM.

2. Acceptance of Order

For services subject to Warranty no Order Acceptance is required. Notwithstanding the foregoing VENDOR reserves the right to reject requests for Warranty services if CUSTOMER does not comply with the terms and preconditions as stipulated in Section B.

For Standard Services as defined in Section C and/or Service Package Group "HELP" Services as defined in Section D and/or Service Package Group "CARE" Services as defined in Section E, Order is subject to the written confirmation of VENDOR which may be sent by mail or by e-mail to the e-mail-address as stated by the CUSTOMER in the relevant Order.

Only Orders that have been accepted by VENDOR are due to become a valid contract between VENDOR and CUSTOMER.

In case of automatic renewal of a service (as stipulated above) the renewal is subject to written confirmation of the VENDOR which may be sent by mail or by e-mail to the e-mail-address as stated by the CUSTOMER.

For the avoidance of doubt it is agreed that an order placed by phone only shall not be considered a valid contract.

3. Term and Termination of Standard Services

Standard Services as defined in Section C are ordered and agreed on a case-to-case-basis only. Order shall remain in force until the service ordered is completed. No notice of termination is required.

4. Term and Termination of Service Package Group “HELP” Services

Support Package Group “HELP” Services as defined in Section D are ordered and agreed are subject to a standard term of one year.

Order term starts the date the relevant Order has been accepted. During the first term, order term will be expanded to the end of the fourth full calendar quarter following the date of acceptance. (I.e. in case the order is accepted on July 5th, its first term will end on September 30th the following year). Consecutive terms will be for one year each, starting the first day of the next quarter following the last day of the final quarter of the previous term, and ending the last day of the fourth quarter.

Orders for Services of Support Package Group “HELP” are subject to be terminated at the end of an Order Term only, considering a 3-months’ notice period.

To terminate an order for Services of Support Package Group “HELP” CUSTOMER is requested to issue a written notice of termination and send it to the VENDOR either by mail or by e-mail [grabner.office@ametek.com].

Orders for Services of Support Package Group “HELP” are subject to automatic renewal if CUSTOMER does not terminate the Order according to the terms as stipulated above.

5. Term and Termination of Service Package Group “CARE” Services

Service Package Group “CARE” Services as defined in Section E are ordered and agreed are subject to a standard term of three years.

Order term starts the date the relevant Order has been accepted.

Orders for Services of Service Package Group “CARE” will be terminated automatically at the end of the three-years-term. No notice shall be required to be given to the other party.

Notwithstanding the foregoing, Service Package HELP which is included in the Services of Service Package Group “CARE” is subject to a one-year-term only. The terms as stipulated in Section F, Clause 4 shall apply. (I.e. HELP is subject to automatic renewal and will be charged separately if not terminated by CUSTOMER accordingly).

6. Premature Termination of Orders for “HELP” and “CARE” services

Unless otherwise provided by law, either party may terminate an Order forthwith by written notice to the other party with immediate effect (i.e. ex nunc) if:

- i. The other party is in continuing delay of payment; or

- ii. The other party commits an irremediable breach of any material obligation of the relevant Order and fails to remedy it within sixty (60) calendar days after receipt of notice; or
- iii. The other party ceases or threatens to cease to carry on its business; or
- iv. The other party makes an assignment for the benefit of, or composition with, its creditors, or another arrangement of similar import; or
- v. The other party commences proceedings under any bankruptcy or insolvency law which are not discontinued within thirty (30) calendar days.

The right for premature termination is without prejudice to the injured party's other rights and remedies if any.

7. Fees

Any service as stipulated above are subject to be charged to the CUSTOMER according to the fees as stipulated in the price list. Price list will be either submitted by VENDOR's sales department respectively are made accessible on VENDOR's website [<http://www.grabner-instruments.com>].

The actual fee will be stipulated in the Order Acceptance. In case of any discrepancy the fees stipulated in the Order Acceptance shall prevail the fees stipulated in the price list.

In case of automatic renewal of an Order the actual fee as stipulated in the price list at the time the renewal is enforced shall apply.

Notwithstanding the foregoing, services subject to Warranty are free of charge provided CUSTOMER is in compliance with the relevant provisions as stipulated in Section B.

8. Travel Expenses

For the avoidance of doubt it is agreed that travel expenses from VENDOR's site to CUSTOMER's site or at any other location defined by CUSTOMER, including a Per Diem Fee, will be charged to CUSTOMER. Per Diem Fee will be defined in the relevant Order.

To become subject to this provision, the trip has to be expressly ordered by CUSTOMER.

For the training on-site as offered in Service Package HELP PLUS only travel expenses will be charged to CUSTOMER. Per Diem Fee will be covered by VENDOR.

9. Payment

Upon acceptance of the Order, VENDOR is entitled to issue and submit the relevant invoice for the services/service package.

In case of renewal, VENDOR is entitled to issue and submit the relevant invoice 4 weeks before the starting date of the new term.

Any invoice is subject to be paid within 7 days upon date of invoice, net of any discount.

10. Delay of Payment

In the event CUSTOMER fails to pay within the agreed terms of payment, VENDOR is entitled to charge interest of 4 percent (4%) per annum above the interest rate for the main re-financing operations of the European Central Bank from the due date for the payment in question.

In addition VENDOR reserves the right to withhold its services for the duration of the delay of payment.

If CUSTOMER fails to pay the amount due following a written reminder of the VENDOR and a grace period of at least 14 days, VENDOR is entitled to terminate the relevant Order.

11. Taxes

All Fees agreed upon in the Order and stated to be payable by CUSTOMER are exclusive of value added tax or any other taxes, charges or duties to which the supply of goods or services by VENDOR hereunder may be subject or give rise. Value added tax and any other taxes, charges or duties plus any interest and penalties imposed with respect thereto shall, where applicable, be added to such amounts, retrospectively if necessary, and shall be due and payable at the same time and in the same manner as such amounts, so that the amount actually received by VENDOR, net of such applicable taxes, charges, duties, interest and/or penalties, shall not be less than the amount that VENDOR would have received, had the same not been applicable.

H. Legal Terms

1. Confidentiality

“Confidential Information” shall mean all information and proprietary data which is marked or notified to the receiving party as being confidential, together with any other information which in the normal course of business would be considered to be of confidential nature (technical, financial, and commercial information, as well as information about plans and strategies, promotions, customers, and related non-technical business information of the disclosing party).

VENDOR and CUSTOMER (the Parties) undertake to keep and maintain all Confidential Information received from the other party, in the strictest of confidence, by employing procedures and practices no less restrictive than the strictest procedure used by Vendor to protect its own confidential and proprietary information, but in no event less than reasonable security measures, and shall not disclose such information to any third party without the prior written consent of the other party.

The Parties shall ensure that their employees, Sub-Contractors, and agents shall only be given access to any Confidential Information received from the other party, on a "need to know basis.

In the event of disclosure of Confidential Information to a third party in default of the provisions of this Article, the defaulting party shall use all reasonable endeavors to recover and prevent such third party from using, disseminating, selling or otherwise disposing of such.

Information shall not be considered Confidential Information to the extent it

- comes, now or subsequently, in the public domain without breach of this confidentiality obligation; or
- was already in the receiving parties' possession free from any obligation of confidence prior to its receipt hereunder; or
- was rightfully communicated by a third party to the receiving party free from any obligation of confidence prior to receipt hereunder; or
- is independently developed by the receiving party without breach of this confidentiality obligation; or
- is required to be disclosed by law.

Confidential Information shall remain the property of the disclosing party.

The provisions of this clause shall survive termination of the subject matter order for service and/or maintenance.

2. Limitation of Liability

The Parties shall be liable for damages in cases of intent or gross negligence only. Slight negligence shall be excluded in any case.

As far as permitted by law, the liability for any and all claims shall - irrespective of legal grounds - be limited to EUR 10,000.00 per damage claim, in total to EUR 50,000.00 for all claims arising out of or in connection with any order agreed upon the GTC-SM.

As far as permitted by law, neither Party shall in no case be liable for any loss of profit, expected cost reductions which were not attained, damage resulting from claims of third parties, indirect and consequential damage, as well as damage to stored data.

Damage claims – for whatever reason – shall be subject to a statute of limitations of one year, beginning with the time when the party suffering the damage first obtains knowledge of the damage.

The provisions of this clause shall survive the expiry or termination of the subject matter order for service and/or maintenance by any party hereto, for any reason whatsoever.

3. Representations

Both CUSTOMER and VENDOR represent and warrant that it has by proper action duly authorized the execution and delivery of the subject matter order for services and/or maintenance and when validly executed and delivered, the subject matter order shall constitute a legal, valid and binding agreement enforceable in accordance with its terms.

CUSTOMER shall take appropriate measures to ensure that qualified members of its staff are at VENDOR's (or at an authorized service partner's) disposition in reasonable scope for all kind of inquiries and co-operation of any kind whatsoever in connection to the fulfillment of the subject matter service and/or maintenance.

CUSTOMER undertakes to provide VENDOR (or an authorized service partner) promptly with all information in connection to the fulfillment of the subject matter service and/or maintenance, answers to queries, decisions and approvals which may be reasonably required by VENDOR (or an authorized service partner). CUSTOMER shall ensure that all required provisions and co-operation of CUSTOMER are provided in a timely manner, in the required scope and are rendered free of charge for VENDOR.

4. Force Majeure

Neither party shall be liable for any delay or failure or refusal to perform its obligations under the subject matter order for services and/or maintenance due to any circumstances beyond its reasonable control including (but not limited to), inclement weather, Acts of God, war, riot, malicious acts of damage, civil commotion, strike, lockout, industrial dispute, power failure or fire, changes in applicable laws.

5. Severability

If any provision of this GTC-SM is held invalid or unenforceable for any reason, such invalidity shall not affect the validity of the remaining provisions, and the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory and valid provision which most closely approximates to the intent and economic effect of the invalid provision.

If any provision of this GTC-SM excluding or restricting liability is or may be invalid in relation to certain categories of liability, this shall not affect that provision's validity in relation to all other categories of liability.

6. Waiver

The failure of either party at any time to require performance by the other party of any provision of this GTC-SM and/or the subject matter order for service and/or maintenance shall not affect in any way the full right to require performance at any subsequent time.

The waiver by either party of a breach of any provision of this GTC-SM and/or the subject matter order for service and/or maintenance shall neither be taken as a waiver of the provision itself nor constitute a waiver of any other subsequent default or breach.

Any course of performance shall not be deemed to amend or limit any provision of GTC-SM and/or the subject matter order for service and/or maintenance.

No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party against whom the waiver or consent is asserted.

7. Notices

Any notices required or permitted to be given hereunder shall be in English in writing and shall be deemed to be duly given to a party hereto at the address set forth in the subject matter order for services and/or maintenance, or to such other address as the party may designate by notice pursuant hereto, or by e-mail to the e-mail-addresses.

Any notice or other communication given under this GTC-SM and/or the subject matter order for services and/or maintenance shall be in writing and shall have been properly given by either party if sent by certified or registered mail, or by overnight courier to the others party registered office, or by e-mail to the e-mail-addresses stated in the subject matter order for services and/or maintenance.

8. Amendments

No amendment to this GTC-SM or any order subject to it shall be effective unless it is in writing and signed by duly authorized representatives of both Parties.

9. Setoff

The Parties agree that the right to compensate any receivables between the Parties is mutually denied, except for claims acknowledged by the other Party or awarded by a competent court.

10. Governing Law and Jurisdiction

This GTC-SM and any order subject to it shall be governed by and construed in accordance with the law of the Republic of Austria. The Parties submit to the exclusive jurisdiction of the courts competent in commercial matters in Vienna, Austria.

11. Priority of Documents

If any provision of an order for service and/or maintenance is inconsistent with any provision of the GTC-SM, the provision of the order for service and/or maintenance shall prevail.

12. Intellectual Property

All trade names, trademarks, service marks, copyrights and other intellectual property rights of VENDOR will remain its property exclusively and CUSTOMER shall not assert any claim thereto.

13. Final provisions

Neither party will have any authority to represent the other or act on their behalf. Nothing in this GTC-SM will be construed to make one party an agent, employee, franchise, partner or legal representative of the other party.

Any legal successor of either party shall be bound to this GTC-SM and the subject matter order for services and/or maintenance in full.

The contract language shall be English.

The Parties further agree that GTC-SM and the subject matter order for services and/or maintenance it is the complete and exclusive statement of the agreement between them which supersedes any proposal or prior agreement, oral or written, and any other communications between them relating to the subject matter thereto.